APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IRENE ROBBINS AND BERT SHEPHERD,
TRUSTEES OF THE DAVIS ROBBINS
FAMILY TRUST AND THE DAVIS
ROBBINS MARITAL TRUST
PLAINTIFFS

VS. **CIVIL ACTION NUMBER**
CV 88-G-0978-S

PAINEWEBBER INCORPORATED, JOHN
DAY, AND JERRY PAYNE
DEFENDANTS

IRENE ROBBINS AND BERT SHEPHERD,
TRUSTEES OF THE DAVIS ROBBINS
FAMILY TRUST AND THE DAVIS
ROBBINS MARITAL TRUST
PLAINTIFFS

VS. **CIVIL ACTION NUMBER**
CV 89-G-0613-S

DAVID L. ARNOLD, W. DAVID EAST,
OWEN VICKERS, HARVEY GOTLIEB,
ALABAMA GREASE PRODUCTS COMPANY
AND BIRMINGHAM HIDE AND
TALLOW COMPANY
DEFENDANTS

TRUSTEES' MOTION FOR RELIEF FROM JUDGMENT
UNDER RULE 60(B)

Irene Robbins and Bert Shepherd ("Trustees") move that the

Court relieve them of the judgment in the captioned case under FRCP 60(b), determining certain of Trustees' claims herein against defendants PaineWebber Incorporated, John Day, David East and David Arnold ("PaineWebber Defendants"). Trustees so move on the following grounds.

1. **Meritorious Claims.** Trustees have meritorious claims against the PaineWebber defendants for fraud, negligence and breach of fiduciary duty. Trustees also have meritorious claims against those defendants under the federal Securities Act of 1934, the Alabama Securities Act and the federal Racketeer Influenced and Corrupt Organizations Act., and individually in tort under common law.

2. **Newly Discovered Evidence.** Trustees have come into possession of the following "newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)" (FRCP 60(b)(2):

> **2(a). Testimony of Charles Stafford.** The testimony of Charles Stafford, evidenced by his affidavit a copy of which is attached;[1] by his deposition, already in the Court's possession; and by a statement he gave the Alabama Securities Commission[2] some three months before his affidavit. In both statements Stafford testifies that before Day started charging losing and breakeven options to Trustees' accounts after the fact, and selling winning options and allocating the purchases, sales and profits to his, Arnold's and East's accounts after the fact, Arnold explicitly explained to Vickers in Stafford's presence that they proposed to do this. Arnold so stated to Vickers, in order to get Vickers' agreement in advance to provide the necessary next-day cashier's-check financings of their profits.

Trustees are informed Stafford has given the same

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1 Exhibit A.
2 Exhibit B.

statement to an attorney and investigator from the Chicago regional office of the Securities and Exchange Commission.

2(b) PaineWebber, et al.'s Consent to NASD Findings of Fact. The April 24, 1991 consent of PaineWebber, Day, East, Arnold and Payne to findings of fact, reflected in the "Decision and Order of Acceptance of Offer of Settlement," NASD Case No. C05910051, attached hereto.[3] Their consents to those findings of fact constitute admissions by them of some of the claims asserted herein by Trustees.

3. Fraud. Defendants obtained the judgment by fraud, in that their answers herein and deposition testimony falsely denied the scheme that Stafford's testimony establishes they discussed and planned in advance, and falsely denied the matters admitted by PaineWebber, Day, East, Arnold and Payne in the NASD opinion.

4. Misconduct of Adverse Parties. The judgment was obtained by misconduct of adverse parties PaineWebber, Day, East, Arnold and Payne, in that:

4(a) Brokers' Refusal to Testify. Day, East, Arnold and Payne refused to testify or produce documents, although they had waived the Fifth Amendment and Judge Nelson in the second styled action had already ruled they had waived the Fifth Amendment.

4(b) Misrepresentation of Judge Nelson's Opinion and Order. As well as refusing to abide by Judge Nelson's prior ruling, the defendants actually represented it to the arbitration panel as holding they had ***not*** waived the Fifth - exactly the opposite of what it held.

4(c) Vickers, et al.'s Refusal to Testify. Vickers, Gotlieb, Birmingham Hide and Alabama Grease refused to honor the arbitration panel's subpoenas and testify at arbitration hearings.

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3 Exhibit C.

4(d) PaineWebber's Obstruction of Thomas's Testimony. PaineWebber, to prevent wire operator Patricia Thomas from testifying, engaged counsel to represent her in resisting testimony, and threatened to counterclaim against Trustees should they file action to make her testify.

For the above reasons Trustees ask that the Court enter an order relieving Trustees of the judgment herein.

Dated: September 11, 1992.

Respectfully submitted,

/s/ Robert B. Eubank
Robert B. Eubank
Attorney for Irene Robbins and Bert R. Shepherd
15 Office Park Circle, S. 203
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Certificate of Service

I hereby certify that I have served the foregoing, on the date shown therein, by placing a copy thereof in the United States mail, postage prepaid, addressed to:

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Exhibit A

Charles Stafford's Affidavit to Trustees

AFFIDAVIT

State Of Alabama
County Of Blount

The undersigned, being duly sworn according to law by the undersigned authority, states as follows:

"My name is Charles Stafford. I live at 301 Windsor Drive, Homewood, Alabama.

"In 1986 I was a business partner of David L. Arnold, a defendant in the captioned case. He and I owned a company called Alabama Grease & Protein Company. The company was in the rendering business. That year we sold Alabama Grease & Protein Company to Owen Vickers, also a defendant in the captioned action, who owns Birmingham Hide and Tallow Company, also in the rendering business. He has since changed Alabama Grease & Protein Company's name to Alabama Grease Products Company.

"After we sold Alabama Grease & Protein Company to Vickers I went to work for Vickers' company, Birmingham Hide & Tallow Company. Arnold became a stockbroker at PaineWebber, Incorporated's Birmingham, Alabama branch, and Vickers became one of Arnold's customers.

"To the best of my recollection, ***sometime in November or December, 1987 Arnold called me on the phone and asked me whether Vickers would be willing to finance some options trades where he was guaranteed not to lose his money***. They would pay Vickers $500 or $600 per day interest. I told him he needed to ask Vickers. ***Arnold called back for Vickers, and then around 6:30 p. m. came***

by Vickers' office and discussed the proposition with Vickers in my presence.

"Arnold told Vickers that he and John Day were going to buy index options and sell the ones that went up in price that day. He stated that, as for the ones that went down, they had a way to get those 'lost in the shuffle.' Arnold said that they would have to pay for the options the next day after they were bought. Vickers asked, 'what if the options lose?' Arnold said that was no problem, that they would only have to pay for the ones that went up and Vickers would already be sure of getting his money back before he advanced it.

"Arnold specifically told Vickers that a new PaineWebber broker, John Day, would be doing the trading of the options. He referred to John Day as the 'whiz kid.' When Vickers appeared not to know John Day, Arnold turned to me and said, 'Chuck knows John Day' I had in fact met John Day at a seminar sponsored by PaineWebber a few weeks before. I think the seminar was at The Club in Birmingham. Harvey Gotlieb, who also works for Vickers, also went to the seminar and met Day.

"*A few weeks later, Arnold called for Vickers and Vickers wasn't there. Arnold talked to me. He said they 'needed the money.' He called back later and got Vickers, who had a check written on Birmingham Hide's account to PaineWebber for about $60,000. I think it was the check a copy of which is attached hereto. He asked me to take the check to PaineWebber, which I did.*

"However for some reason PaineWebber wouldn't accept the check. Arnold and I went downstairs to First Commercial Bank, and asked them to deposit Birmingham Hide's check and let Arnold write a check against it. However First Commercial wouldn't do this, or PaineWebber wanted a cashier's check, I can't remember which. I called Vickers and told him this. I think I said

PaineWebber wanted a cashier's check. At any rate, Vickers said he would take care of it.

"***Later on Vickers told me Day had gone to Brazil***. He mentioned that Day, before leaving, had bought two cars from 'Autobahn Classics' in Birmingham. I think the cars were a Porsche and a Mercedes. Vickers said he knew this because he had some financial interest in 'Autobahn Classics.' He either owned part of it, or was financing it.

"***Sometime later, after the Robbins trustees had objected to the index options trading and it had been stopped, Arnold told me that the losing options had been charged to the Robbins' accounts. I believe he mentioned they were trust accounts. He also stated that David East had made about $50,000 out of the index options profits. He said that he, Arnold, had made very little out of it.*** He also stated that Day was cooperating with the Robbins' in order to get PaineWebber to make their losses good and have the matter stop at that.

"In 1991 Vickers told me that an arbitration panel had given the Robbins trustees an award for only $325,000 of the money they had lost. He said they were stupid not to have accepted an earlier offer of $1,000,000 which he said PaineWebber had made. He said the matter was as good as over. Later however an article appeared in the newspapers that a federal judge had vacated the arbitration. At that time Vickers said Arnold had gotten him into a lot of trouble, and it was all Arnold's fault.

"I have read the above carefully and it is true and correct to the best of my recollection."

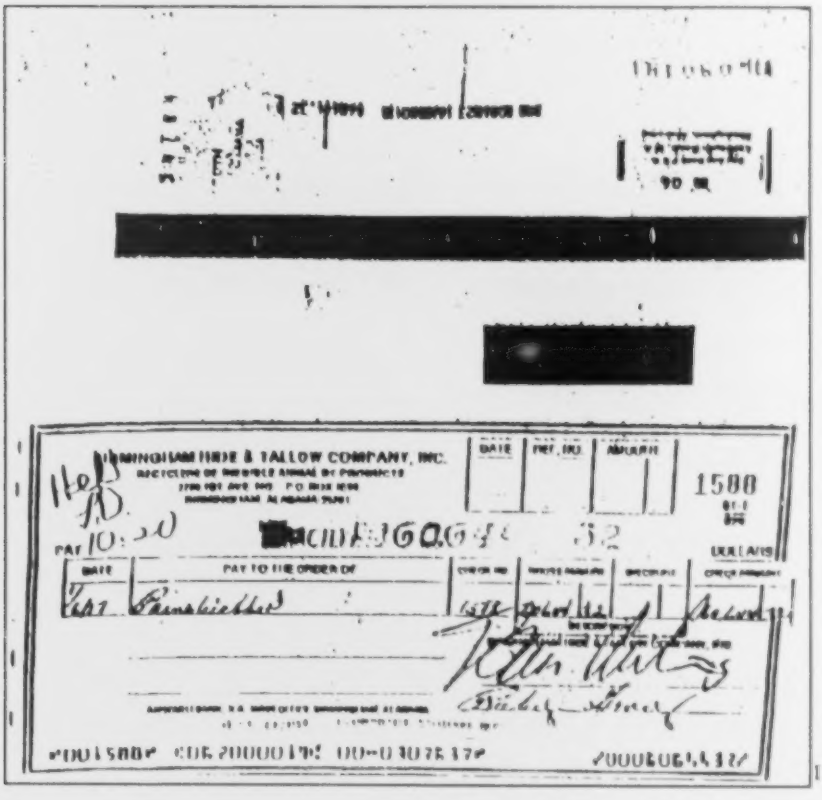
/s/ Charles L. Stafford
Charles Stafford

Dated: September 8, 1991.

Sworn to and subscribed before me on September 8, 1991.

Carl Dalton Nesmith
Notary Public

My commission expires: 9-14-93



[1]

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1 This is the check that appears at Petition for Certiorari, p. 17.

Exhibit B

Charles Stafford's Affidavit to
Alabama Securities Commision

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

AFFIDAVIT

Personally appeared before me, the undersigned Notary Public, CHARLES L. STAFFORD, and after being duly sworn, deposes and says as follows:

My name is Charles L. Stafford. I am a 49 year old white male and I reside at 301 Windsor Drive, Homewood, AL 35209.

David Arnold and I went into business together in 1976. We were co-owners of Alabama Grease and Protein Co. In November 1986, we sold the company to Owen Vickers, Harrvey Gotlieb, and Harry Vickers (Owen Vickers' uncle). This was a cash sale. The name was changed to Alabama Grease Products. I then went to work for Birmingham Hide and Tallow which is owned by Harry Vickers and Owen Vickers. Owen Vickers and Harry Vickers also own Alabama Renderers and Alabama Hide and Tallow.

I kept in touch with David Arnold and spoke to him quite often. David Arnold got into the stock business working for Painewebber and David Arnold handled several trades for me. ***In December 1987, David Arnold came by Birmingham Hide and Tallow late one afternoon after the office had closed and met with Owen Vickers. I did not participate in the meeting, but sat in and listened. David Arnold told Owen Vickers substantially the following***:

> ***David Arnold talked about John Day and how smart he was with Options. Day was referred to as the "WHIZ KID". John Day was making money buying these Options. David Arnold told Owen Vickers he***

would need money from time to time, about $50,000, for one to two days to get into the Options. The Options that made money would be put into a broker's account and money would be needed that day to pay for the Options. John Day would be handling the transactions. Owen Vickers asked what would happen if the Options went bad. David Arnold emphasized that he would not have to pay for them if the Options went bad. The bad Options would be taken care of. Owen Vickers was concerned about getting his money back, but David Arnold assured him that it was a sure thing. David .Arnold would pay Owen Vickers for the use of the money. I thought at first it was around $1,200 a day, but later learned it was about $500-$600 a day. If it took more than one day, Owen Vickers would be paid more.

Several days later, David Arnold called and wanted a check for about $60,000. Owen Vickers was out at the time, but David Arnold eventually got in touch with him and a Cashier's Check was obtained by Owen Vickers. I delivered the Cashier's Check to David Arnold. The check was payable to Painewebber. I believe Owen Vickers figured he was protecting himself by making the check payable to Painewebber in case something did go wrong. David Arnold had wanted to put the check in his account with Painewebber, but as the check was made payable to Painewebber, the girl ~~in the wire cage~~ at the desk *CLS* where the checks were deposited would not let him deposit it to his account. David Arnold then went to his bank downstairs and tried to deposit the check in his personal account. I believe he was able to deposit it at that time.

As far as I know, this is the first transaction between David Arnold and Owen Vickers. I was not involved in any of the other checks that were given to Painewebber. Also, I never saw any checks that came back payable to Owen Vickers.

David Arnold came by at least once a week. Some way, I learned that a Trust Fund was involved and that the Trust Fund was taking the losses. Occasionally I would make a remark to Owen Vickers and David Arnold that the Trust people must be dumb to let this happen to their account. Owen Vickers and David Arnold both tried to convince me tthat they, Owen Vickers and David Arnold, knew nothing about any losses to any Trust Fund.

When the article came out in the newspaper about John Day being indicted, Owen Vickers and Harvey Gotlieb were very upset. Owen Vicvers called David Arnold several times during this period, but I do not know the gist of any of the conversations, other than Owen Vickers was very upset.

On May 23, 1991, I quit Birmingham Hide and Tallow and went into business for myself. It was a business that I was working on after hours while I was with Birmingham Hide and Tallow. It was not a business that would be, nor was in, competition with any of Owen Vickers companies.

Further affiant sayeth naught.

/s/ Charles L. Stafford
(Signature)

Sworn to and subscribed before me, the undersigned Notary Public, this 2d day of June, 1991.

WITNESS:
/s/ Landon F. Aldridge

26 Oct 1993
My commission expires

WITNESS:
/s/ Carl R. Salle

Exhibit C

4/24/92 Decision and Order of Acceptance
of Offer of Settlement
Amended Complaint Case No. C05910051
NASD District Business Conduct Committee
for District No. 5
v.
PaineWebber, John Day, Jerry Payne,
David Arnold and David East

[Reproduced as Appendix E to
Petition for Certiorari]